

Ballot Measure #3

Should people who use e-mail, instant messaging, text messaging and the social networks to bully or harass others be allowed to do so as part of their constitutionally protected right to free speech?

Background

Many adults consider school bullying part of the typical social atmosphere in schools. In movies and television shows, school bullying is often portrayed as a rite of passage, with no mention of the lasting damage it can cause. It's so engrained in our culture as a part of the childhood experience that few ever imagined it would turn into a disturbing trend of violence and disregard for fellow students' emotional and physical well-being.

Bullying tactics that used to be limited to intimidation and embarrassment have evolved into grand schemes by some bullies to socially disgrace, alienate and, in some cases, physically harm their victims. These acts of harassment have even extended far beyond the classroom, as online bullies spread incorrect or embarrassing information about fellow classmates through e-mail, instant messaging, text messaging and the social networks. It is estimated that 4 in 10 American teens have been victims of "cyber bullying" while 75 percent of students in the U.S. report that they have visited a website that turns other students into targets for harassment, according to a study by the National Crime Prevention Council.

Negative outcomes of bullying

Increased school violence: A U.S. Secret Service report on school violence in America showed that the students who initiated school shootings felt not only teased by their classmates but persecuted and tormented. Despite numerous theories, one common factor has been found among 75% of the young school-based shooters – bullying and harassment at school.

Harm to bullying victims: Statistically, most bullying victims do not harm their classmates. Most suffer in silence while their grades and attendance drop and feelings of helplessness grow. Every day in the U.S., an estimated 160,000 students miss school out of fear of attack or intimidation by other students while one out of every ten students who drop out of school does so because of repeated bullying.¹

Long-term damage for bullies: It isn't only the victims of bullying who are at risk for long-term consequences. When left unchecked, bullying in school creates a breeding ground for more serious forms of harassment later in life. Bullies often go unpunished and begin to practice other types of anti-social behavior, including vandalism, drug use, and poor school attendance. Research shows that students allowed to bully their way through school have a greater chance of growing up to be bigger bullies in adulthood with greater odds of imprisonment later in life.²

¹ Pollack, W. S. (1998). *Real boys*. New York: Henry Holt.

² Dan Olweus, *Addressing the Problem of Juvenile Bullying*, p. 2.

Resources

Bullying at School
California Department of Education
<http://www.cde.ca.gov/ls/ss/se/documents/bullyingatschool.pdf>

Description: In-depth analysis of bullying by CDE. (PDF; 1.3MB; 52pp.)

Bullying Frequently Asked Questions
California Department of Education
<http://www.cde.ca.gov/ls/ss/se/bullyfaq.asp>

Description: FAQs taken from the in-depth analysis of bullying by CDE.

Challenges for Schools

Faced with growing evidence of teen suicides connected with online “cyber bullying,” more states and school districts are looking at how to deal with the issue. While many schools have attempted to curb traditional bullying at school through disciplinary policies and prevention programs, the growth of student cyber-bullying has brought on a national debate about free speech limitations and the extent to which schools can control what students do off campus. Consider the following commentary on this issue from Ars Technica and the First Amendment Center (links to both websites appear below under “Resources”):

School officials do not generally have control over what students do outside of school, but, as the First Amendment Center reports, even this issue is complicated. Students who threaten or harass other students using school equipment or during school time can most likely be sanctioned, but even students who do such things from home face the possibility of school discipline under the "substantial disruption of the educational environment" ruling from the Tinker v. Des Moines Independent Community School District case in 1969.³

In Tinker, the Supreme Court ruled that school officials could censor student-initiated expression if officials could reasonably forecast that the speech created a substantial disruption or material interference with school activities or invaded the rights of others. However, the Court emphasized that school officials may not suppress student speech simply because they don't like it or out of what they termed "undifferentiated fear or apprehension."⁴

While numerous court cases have focused on students' right to free speech, the Supreme Court has not considered any cases involving student speech over the Internet. School administrators who seek to keep cyber bullying from undermining the learning environment must weigh the potentially tragic consequences of taking no formal action against the possibility that, if they attempt to limit this behavior, they may be violating a students' constitutionally protected right to free speech.

³ Cyberbullying and Schools, Ars Technica

⁴ First Amendment Center

Resources

Case Study: Cyber bullying and Free Speech
Channel One Network
http://www.channelonenetwork.com/teacher/articles/2007/01/02/1_voice/cyberbullying.pdf

Description: Cyber bullying case study with critical thinking questions for use in classroom discussion.

Cyberspeech Overview
First Amendment Center, July 12, 2007
<http://www.firstamendmentcenter.org/speechstudentexpression/topic.aspx?topic=cyberspeech>

Description: Overview of past court cases and legal issues related to cyber bullying and free speech protections.

Key Terms

Bullying: A variety of hostile acts that are carried out repeatedly over time. The acts involve a real or perceived imbalance of power, with the more powerful child or group attacking those who are less powerful. Bullying may be physical (hitting, kicking, spitting, pushing), verbal (taunting, malicious teasing, name calling, threatening), or psychological (spreading rumors, manipulating social relationships, or promoting social exclusion, extortion, or intimidation).⁵

Cyber bullying: (aka e-Bullying) Occurs when a child, preteen or teen is tormented, threatened, harassed, humiliated, embarrassed or otherwise targeted by another child, preteen or teen using technology-based forms of communication such as e-mail, instant messaging, text messaging, the social networks.⁶

Freedom of Speech: A right, as stated in the 1st and 14th Amendments to the U.S. Constitution, to express information, ideas, and opinions free of government restrictions based on content. A legal test of proposed restrictions on freedom of speech was stated in *Schenk v. U.S.* (1919) by Oliver Wendell Holmes, Jr. A restriction is legitimate only if the speech in question poses a "clear and present danger" — i.e., a risk or threat to safety or to other public interests that is serious and imminent.⁷

Right to Safe Schools: Article I, § 28(c), of the California State Constitution, approved by voters in 1982, states that all students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses that are safe, secure, and peaceful.

⁵ Source: CDE, <http://www.cde.ca.gov/ls/ss/se/documents/bullyingatschool.pdf>

⁶ Source: StopCyberbullying.org, http://www.stopcyberbullying.org/what_is_cyberbullying_exactly.html

⁷ Source: Britannica Concise Encyclopedia, <http://www.answers.com/topic/freedom-of-speech>

Pros & Cons

There are several arguments for and against allowing people who use e-mail, instant messaging, text messaging and the social networks to bully or harass others. Consider the following pros and cons, which balance the right to free speech against the right of all students to attend school in a safe, secure and peaceful atmosphere:

Pro argument:

Con argument:

| Right to Free Speech | vs. | Right to Safety |
|--|------------|--|
| <p>The Constitution of the United States gives people the right to express information, ideas, and opinions free of government restrictions based on content. Allowing censorship or punishing someone for speaking freely on the Internet could ultimately jeopardize other forms of free speech and possibly undermine the very right to free speech itself. People who use e-mail, instant messaging, text messaging and the social networks to communicate shouldn't be held responsible for how others choose to respond to what they write, even in cases involving suicide or other forms of violence.</p> <p>It is the responsibility of parents to monitor and correct students' behavior. Schools can also engage students in discussions of cyber bullying and seek their involvement in identifying ways to prevent it without infringing on their right to free expression.</p> | | <p>People may have a right to freedom of speech, but they do not have a right to use that speech to bully others, particularly in school. Article I, § 28(c), of the California State Constitution, approved by the voters in 1982, states that all students and staff of public primary, elementary, junior high, and senior high schools have the inalienable right to attend campuses that are safe, secure, and peaceful. Students who engage in cyber bullying, whether at school or outside school grounds, are creating an unsafe atmosphere that can interfere with their classmates' mental state and their ability to learn.</p> |

Resources

States seek laws to curb eBullying: Legislative efforts pit online safety against free-speech rights

eSchool News, Feb 23, 2007

<http://www.eschoolnews.com/news/top-news/index.cfm?i=45498&CFID=1438175&CFTOKEN=94317260>

Cyber bullying' Grows, and So Do Lawsuits

Find Law/ The National Law Journal, December 10, 2007

<http://www.law.com/jsp/article.jsp?id=1197281074941>

Resources

Cyberbullying and Schools

Ars Technica, February 22, 2007

<http://arstechnica.com/news.ars/post/20070222-8903.html>

Cyberbullying Emerges As A New Threat

St. Louis Post-Dispatch, 12/02/2007

<http://www.stltoday.com/stltoday/news/stories.nsf/stlouiscitycounty/story/C9A643A42827FA9F862573A400148639?OpenDocument>